IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal From Order No.55 of 2006
with
Civil Application No.68 of 2006

Shri Gunapal Doodanna Punja .. Appellant
vs
Mr Damodar Ammu Melant... Respondent

Mr H S S Murthy with Ms Sapna Samant for appellant

Mr P.K.Dhakephalkar with Mr H S Anand for respondents

CORAM; A.M.KHANWILKAR J.

DATED 30.l.2006

P.C.

l. Heard the learned counsel for the parties. Perused the documents brought to my notice including the pleadings on record. Admit. Advocate for the respondents waive serice. As short question is involved, Appeal is heard forthwith for final disposal by consent.

2 This appeal takes exception to the order passed by the City Civil Court Bombay dated 23.l2.2005, whereby the appellant has been restrained in terms of the impugned order at ad-interim stage. The grievance of the appellant - original defendant is that, the trial court having recorded prima facie opinion, accepting the stand of the appellant-

defendant, as can be seen from the para 2 of the impugned order, was not justified in passing the nature of order that has been passed, which is impugned in this appeal.

3. The grievance in this appeal is regarding the direction that the defendant is in possession of only one room and he shall not enter upon the other portion of the property and will confine his possession only to one room in his exclusive occupation.

4. It is not necessary to advert to all the facts and events for the nature of the order that I propose to pass. It is seen from the pleadings that it is common ground that 5 rooms have been constructed on the disputed property. According to the appellant, as mentioned in para 5 of the reply affidavit to the notice of motion, he was in physical occupation and possession of one room and one room was in occupation of the respondent. The remaining premises are stated to be in possession of both the parties and are being jointly let out to the customers for compensation. It is also accepted by the appellant in para l3 of the same affidavit that the plaintiff as per the arrangement between the parties, was to keep true proper and

fair accounts. It is accepted that the original accounts are lying with the plaintiff on which signatures of the appellant have been obtained. It is then mentioned in the said affidavit that the appellant has some of the books of accounts between him and the plaintiff on which he would place reliance.

5. As mentioned earlier, and as is rightly contended by the appellant, the trial court having opined that it is not possible to say that the defendant had no interest in the property could not have confined his (defendant’s) possession and entry only in respect of one room. To that extent the operative order passed by the trial court will have to be set aside. Instead, the operative order of the trial court impugned in this appeal will stand modified to the effect that the parties shall maintain status quo in respect of the physical possession of respective one room(as per the agreed map given by the parties across the bar) in their possession; and they will continue to have joint possession of the remaining portion of the property. It is however, made clear that the earlier arrangement which operated between the parties as noted in para l3 of the reply affidavit relating to the continuity of business under the

name and style of Hill View Cottage and maintainance of true, proper and fair account by the plaintiff will have to continue till the disposal of the notice of motion or such other order to be passed by the trial court in that behalf.

6. There is one more aspect that will have to be addressed in this order. Serious grievance has been made regarding the manner in which the proceedings were conducted by the trial court. According to the learned counsel for the appellant, with all humility at his command, he would submit that the order which is impugned in this appeal has been passed by the trial court in undue haste. It is not necessary to dwell upon this aspect in great detail. In order to ensure that the appellant will get fair hearing at the trial, without meaning any disrespect to the learned Judge, it would be appropriate that the suit as well as the notice of motion is assigned to some other judge of the same court, other than the Judge who has passed the impugned order. The learned counsel for the respondent has no objection to adopt this course. The new trial Judge to whom the proceedings will have to be assigned in view of this order shall dispose of the notice of motion as expeditiously as

possible and preferably within 3 months from the date of assignment of the case before his court.Needless to observe that all questions are left open.

7. While disposing of this appeal the question whether court receiver should be appointed in respect of the disputed portion of the property, having regard to the nature of the controversy involved,that question will have to be considered by the trial court,if any. If such an application is made before that court, same be considered on its own merits,uninfluenced by any observations made in this order.

8. Although the respondent is permitted to conduct the running business till further orders are passed in the notice of motion, the appellant himself or his family members i.e. wife and children, will be entitled to visit the premises to reassure himself that the accounts maintained by the respondent are proper,fair and correct.

. Appeal as well as the cognate civil application are disposed of on the above terms.